United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

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74-1752

To be argued by:
ROBERT S. HAMMER

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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JAMES L. DILLARD,

Plaintiff-Appellant,

-against-

ANNABELLE B. DILLARD, Commissioner U.S. Internal Revenue Service, Revenue Officer ANTHONY J. FABISZEWSKI and Auditor MR. NATHANIEL GLANTZ; FLORENCE M. KELLEY, Administrative Judge of the Family Court in the (5) counties of New York City,

Defendants-Appellees.

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BRIEF FOR APPELLEE HON. FLORENCE M. KELLEY

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3

Dillard

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

JAMES L. DILLARD, :

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ANNABELLE B. DILLARD, Commissioner :
U.S. Internal Revenue Service,
Revenue Officer ANTHONY J. FABISZEWSKI : 74-1752
and Auditor MR. NATHANIEL GLANTZ;
FLORENCE M. KELLEY, Administrative :
Judge of the Family Court in the (5)
counties of New York City, :

Defendants-Appellees. :

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BRIEF FOR APPELLEE
HON. FLORENCE M. KELLEY,*

Question Presented

Did the District Court correctly dismiss this action for want of federal subject matter jurisdiction?

Statement of the Case

(1)

This an appeal in forma pauperis by plaintiff, pro se from an order of the District Court for the Eastern District of New York, entered April 5, 1974 which dismissed plaintiff's complaint for lack of federal jurisdiction,

* Since the commencement of this action, Judge Kelley has been appointed a judge of the Court of Claims and has been succeeded by Hon. Joseph B. Williams as Deputy Administrative Judge of the City of New York, Family Court.

as well as for his default upon the Government's motion to dismiss.

The complaint, apparently invoking the civil rights laws, 42 U.S.C. § 1983; 28 U.S.C. 1343, seeks to require the Internal Revenue Service to permit him to file a joint tax return with his wife, from whom he has been intermittently estranged since 1963. It also seeks injunctive relief against a wide variety of alleged unfair, discriminatory and unconstitutional treatment at the hands of the New York State Family Court and its administrators.* He also seeks $100.00 in damages.

(2)

The District Court (Hon. John R. Bartels, J.) granted the Government's motion to dismiss and, sua sponte, dismissed the complaint as to Judge Kelley, stating: "We find no basis whatsoever for any jurisdiction over a suit in this Court against the Administrative Judge for the New York City Family Court" (Minutes April 5, 1974, p. 3).

* As appears from the complaint (¶s 1st through 4th) appellant's matrimonial problems have been the subject of extensive litigation. The decisions therein would be res judicata and therefore bar this action for this reason as well, even though brought as a civil rights action. American Surety Co., v. Baldwin, 287 U.S. 156, 166(1932); Rooker v. Fidelity Trust Co., 263 U.S. 143, 415-416 (1923); Goss v. Illinois, 312 F. 2d 257, 259 (7th Cir. 1963); Murray v. Oswald 333 F. Supp. 493 (S.D.N.Y. 1971). It should be noted that appellant has attempted to circumvent this rule before e.g., Dillard v. Family Court, 404 F. 2d 404 (2d Cir. 1968); Dillard v. Family Court, app. dis. 305 U.S. 825 (1969) Dillard v. N.Y.C.T.A., cert. den. 414 U.S. 839; 415 U.S. 939 (1974).

ARGUMENT

THE DISTRICT COURT PROPERLY DETERMINED THAT IT WAS WITHOUT JURISDICTION AS TO A SUIT AGAINST THE FAMILY COURT

A.

Actions for money damages against judicial or quasi-judicial officers are absolutely barred by the doctrine of judicial immunity, even where actual misconduct or malice is alleged, Scheuer v. Rhodes, ____ U.S. ____; 40 L. Ed. 2d 90, 101 (1974) Pierson v. Ray, 386 U.S. 547 (1967); Morgan v. Sylvester, 125 F. Supp. 380 (S.D.N.Y. 1954), aff'd 220 F. 2d 758 (2d Cir. 1955), cert. den. 350 U.S. 867 (1955), reargument denied 350 U.S. 919 (1955); Gregoire v. Biddle, 177 F. 2d 579 (2d Cir. 1949), cert. den. 339 U.S. 949 (1950) and Tenney v. Brandhove, 341 U.S. 367 (1951).

The claims against Judge Kelley insofar as she was personally involved, clearly arose out of her official duties, and may not be litigated in the federal courts.

Furthermore, any alleged misconduct of non-judicial staff members of the Family Court that may possibly be included in the complaint is personal and may not be imputed to Judge Kelley, since there is no doctrine of respondeat superior in civil rights actions, Scheuer v. Rhodes, supra, 40 L. Ed. 2d at 97 ; Sostre v. Rockefeller, 442 F. 2d 178, 205 (2d Cir. 1971),

cert. den. 404 U.S. 1049 (1972), Scolnick v. Lefkowitz, 329 F. 2d 716 (2d Cir. 1964), cert. den. 379 U.S. 716; Powell v. Workmen's Compensation Board, 327 F. 2d 131, 137 (2d Cir. 1964).

B.

Although Judge Kelley is the only named defendant associated with the Family Court, an examination of the complaint demonstrates that the action is one against the court itself, and thus beyond the scope of the civil rights laws, Zuckerman v. Appellate Division, 421 F. 2d 625, 626 (2d Cir. 1970).

Even if the court should deem the claim for an injunction properly raised against Judge Kelley, it is now moot and academic by reason of her appointment to the Court of Claims. The record is devoid of any evidence that her successor Judge Williams is engaging in any personal misconduct that might be subject to equity relief. Spomer v. Littleton, 414 U.S. 514, 520-522 (1974).

In any event, it is our submission that judges acting in the court of their jurisdiction are immune from federal civil rights law injunctions, except in the most extreme situations when a litigant cannot vindicate his rights through the state judicial system. Mitchum v. Foster, 407 U.S. 220, 243 (1972); Younger v. Harris, 401 U.S. 37 (1971); Samuels v. Mackell, 401 U.S. 66 (1971). Cf. Littleton v. Berberling, 468

F. 2d 389, 395-408 (7th Cir. 1972), rev'd. sub nom. O'Shea v. Littleton, 414 U.S. 488 (1974).

Courts that have recognized the right to obtain injunctive relief against judges have usually limited such relief to areas not involving judicial discretion; Cheramie v. Tucker, 493 F. 2d 586, 588, Ftn. 6, 7 (5th Cir. 1974).

The record demonstrates, that in this case, appellant's complaint is simply his dissatisfaction with state court judgments properly rendered which have or could have been reviewed in the State's appellate courts.

CONCLUSION

THAT ORDER APPEALED FROM SHOULD BE DISMISSED

Dated: New York, New York
October 22, 1974

Respectfully submitted,

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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Ghislaine Salomon , being duly sworn, deposes and says that she is employed in the office of the Attorney General of the State of New York, attorney for herein. On the 24th day of October , 1974 , s he served the annexed upon the following named person :

JAMES L. DILLARD
216 Reid Avenue
Brooklyn, New York 11221

SCOTT P. CRAMPTON
Assistant Attorney General
Tax Division
Washington, D.C. 20530

and other Party
Attorney/ in the within entitled action by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, and other party
New York, New York 10047, directed to said Attorney/ at the address within the State designated by them for that purpose.

Ghislaine Salomon

Sworn to before me this
24th day of October , 1974

P. Scott Crampton
Assistant Attorney General
of the State of New York